

State of Colorado



Bill Owens
Governor

Richard Djokic
Director

DPA

Department of Personnel
& Administration

State Personnel Board

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Meeting Minutes May 18, 2004

The State Personnel Board met in public session on Tuesday, May 18, 2004, at the Colorado Department of Transportation, 4201 East Arkansas Avenue, Second Floor Auditorium, Denver, Colorado 80222.

The meeting was called to order by Chair Joyce Lottner at approximately 9:00 a.m. In addition to Ms. Lottner, Board members Linda Siderius and John Zakhem were present. Board member Diedra Garcia arrived at about 9:20 a.m. Board member Elizabeth Salkind was absent.

Richard Djokic, Board Director; First Assistant Attorney General Richard Forman, Board Counsel; and Jane Sprague, General Professional III, were present in person.

I. REQUESTS FOR RESIDENCY WAIVERS

A. May 1, 2004 Report on Residency Waivers

Mr. Djokic reported that there were no residency waiver requests this month.

II. PENDING MATTERS - LEGISLATION

- A. House Bill 04-1373 - A Bill for an Act Concerning Modifications to the "State Personnel System Act"**
- B. House Concurrent Resolution 04-1005 - Concerning Reform of the State Civil Service System**
- C. Senate Bill 04-131 - A Bill for an Act Concerning Modifications to the Procedures for Handling an Employment Discrimination Complaint Filed by an Employee in the State Personnel System**

- D. Senate Bill 04-007 - Concerning the Determination of Which Higher Education Employees are Exempt from the State Personnel System

Director Djokic gave a brief legislative report. Although the Civil Service Reform bills, HB04-1373 and HCR04-1005, passed, SB04-131, which would have mandated Board hearings for all discrimination appeals, died in committee. Mr. Djokic also said that there would be training with regard to SB04-007.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

- A. Denise Martinez v. Department of Personnel and Administration, Executive Office, State Personnel Board case number 2003B118.

Following a discussion on Board Rule R-4-11, Ms. Garcia moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision. Ms. Lottner seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia and Ms. Lottner. Mr. Zakhem voted in opposition to the motion. Ms. Siderius abstained from voting. Ms. Salkind was absent.

- B. Greg Bailey v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2004B043.

Mr. Zakhem moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia and Ms. Salkind were absent.

- C. LaVonne Taylor v. Department of Education, Colorado School for the Deaf and the Blind, State Personnel Board case number 2003G095 (C).

Mr. Zakhem moved to adopt the Dismissal Order. Ms. Lottner seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Zakhem, and Ms. Lottner. Ms. Siderius abstained from voting. Ms. Salkind was absent.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

- A. Robert Smoke v. Department of Labor and Employment, Unemployment Insurance, State Personnel Board case number 2004G025.

Ms. Siderius moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia and Ms. Salkind were absent.

- B. Melissa Rutter v. Regents of the University of Colorado, University of Colorado at Boulder, Department of Public Safety, State Personnel Board case number 2004G032.

Director Djokic recused himself from participation in the discussion of this case. Ms. Sprague called the case number and the vote in lieu of the Director.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Board's Director and deny the petition for hearing. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia and Ms. Salkind were absent.

- C. David Teigen v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2003B127.

Ms. Siderius moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing on the issue of whether the Department of Corrections' actions relating to Complainant's retention rights and the subsequent changes in his position were arbitrary or capricious. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia and Ms. Salkind were absent.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR

- A. George Muncy v. Department of Human Services, Division of Colorado State Veterans Nursing Home, Colorado State Veterans Center at Homelake, State Personnel Board case number 2004B087.

On April 29, 2004, an Order Regarding Respondent's Motion to Dismiss, Initial Decision of the Administrative Law Judge and Notice of Appeal Rights was issued. The ALJ found that Respondent's abolishment of Complainant's position was not arbitrary, capricious or contrary to law. The ALJ ordered that Respondent's Motion to Dismiss is granted, Respondent's action is affirmed, and Complainant's appeal is dismissed with prejudice.

- B. Roberta Wegman v. Department of State, Secretary of State, State Personnel Board case number 2004B082.

On May 6, 2004, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's suspension without pay of Complainant was not arbitrary, capricious or contrary to rule or law. The ALJ ordered that Respondent's action is affirmed and Complainant's appeal is dismissed with prejudice.

VI. REVIEW OF THE MINUTES FROM THE APRIL 20, 2004 PUBLIC MEETINGS OF THE STATE PERSONNEL BOARD

Mr. Zakhem moved to approve the minutes of the April 20, 2004 meeting as submitted. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia and Ms. Salkind were absent. However, after Ms. Garcia arrived for the meeting and the Board realized that Ms. Siderius had been absent for the April 20, 2004 meeting, the Board took another vote on the minutes. Mr. Zakhem moved to approve the minutes of the April 20, 2004 meeting as submitted. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Zakhem, and Ms. Lottner. Ms. Siderius abstained from voting because she was not present at the April 20, 2004 meeting. Ms. Salkind was absent.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS APRIL 20, 2004 PUBLIC MEETING:

- A. Robert Flores, David Holt, Ronald Johnsen, Donald Lawson, Dolores Montoya & Charlene Peterson v. Department of Corrections, State Personnel Board case number 2003G124.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing.

- B. Harlen Ainscough v. Department of Public Health and Environment, Hazardous Materials & Waste Management Division, State Personnel Board case number 2003G114.

The Board voted to adopt the Preliminary Recommendation of the Director and deny the petition for hearing.

- C. Albert McNeill v. Department of Labor and Employment, State Personnel Board case number 2004G017.

The Board voted to adopt the Preliminary Recommendation of the Director and deny the petition for hearing.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

Pat Romero, Department of Personnel and Administration (DPA), Division of Human Resources, presented a report on behalf of Jeff Schutt, Director of the Division, with respect to the following topics:

- Rulemaking - recent rulemaking has been conducted making substantive changes to: (1) the reinstatement policy, which provides that from this point forward, if an employee leaves in good standing, he may return; (2) the restoration of leave policy; and (3) holiday leave, which may only be paid if an employee is at work the day before or the day after a holiday. Emergency rulemaking is anticipated to implement HB04-1446 concerning the ability of an employee to receive compensation from more than one state agency.
- The Governor's Star Awards have been distributed for employees in areas such as citizenship, productivity, and employee of the year. Chair Lottner requested the names of award recipients so that she could send congratulatory notes to those employees on behalf of the Board.
- Benefits changes are anticipated for January 2005; the state is looking into self-funding.
- The percentage ranges for distribution of performance pay are: Level 2 = 0-1%, Level 3 = .5-2%, and Level 4 = 1.5-5%.

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Budget Report and Revenue and Expense Report
- Cases Scheduled for Preliminary Review
- Cases on Appeal to the Board and to Appellate Courts
- Web Site Statistics (March and April 2004)
- Mandate in Shipley v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2001G029, Court of Appeals No. 02CA2271
- Mandate in Verhey v. Department of Revenue, Taxpayer Services, State Personnel Board case number 2003G129, Court of Appeals No. 04CA20
- Mandate in Harvey v. Department of Human, Division of Youth Corrections, Mount View Youth Service Center, State Personnel Board case number 2002G129, Court of Appeals No. 03CA2404
- Mandate/Order Affirmed in Hendrix v. Department of Corrections, Volunteer Service Administration, State Personnel Board case number 2002G91, Court of Appeals No. 02CA2024
- Future meeting locations

Director Djokic specifically mentioned that the Board meetings would be held at locations other than the Department of Transportation in July, August, and October, and that each Agenda would specify the location of the meeting, as well as the schedule for the remainder of the fiscal year. There is also a special announcement on the website regarding meeting locations.

With regard to the budget, Mr. Djokic stated that the Board has underspent on operating expenses and thus, the budget in good shape at this point in the fiscal year. He stated that he is looking into training opportunities for the staff.

In addition to the above matters, Mr. Djokic mentioned several other issues for discussion. An issue from Jeff Wells, Executive Director of DPA and Director of the Colorado Department of Labor and Employment (CDLE), has arisen with regard to the Board's policy of posting initial decisions on the Board's website. In the three-year old case of Roderick v. CDLE, a case involving violence in the workplace, one of the witnesses in that case has expressed apprehension about the ready accessibility of the initial decision on the Internet. In the past, information has been redacted from initial decisions involving the names of juveniles and companies with which the state conducts business. Does the Board wish to use a case-by-case approach or enact a new policy with regard to posting initial decisions and protecting certain information? Ms. Siderius moved that the Board not disturb the policy of posting initial decisions on the Board's website and instead use a case-by-case approach regarding a request for protecting certain information. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia abstained from voting. Ms. Salkind was absent. The Board agreed that a notice should be posted on the website indicating that if it is desirable that information be redacted from a particular initial decision, then the party desiring the redacting of that information should file a motion with the administrative law judge who wrote the initial decision.

Finally, the question of whether state identification (ID) cards should be issued to Board members has arisen through a request for a state ID from Diedra Garcia. Mr. Djokic stated that he had discussed the topic of authorization for state IDs with Board Counsel Forman. The current policy is to issue IDs for state employees and contractors with the state. Should the Board members be issued state IDs? Ms. Garcia remarked that she had raised the issue as a matter of convenience and did not mean that it had to become a matter of policy.

B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

Stacy L. Worthington, First Assistant Attorney General for the Employment Section, addressed the Board concerning changes in that section and introduced a relatively new assistant attorney general, Christian Ricciardiello.

The Board did not go into Executive Session and the meeting ended by consensus.

X. EXECUTIVE SESSION

A. Case Status Report

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APPROVED THIS 15th DAY OF JUNE, 2004.

Joyce Lottner, Chair

John Zakhem, Vice Chair

Diedra Garcia, Member

Linda Siderius, Member